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FIRST REPRINT

A.B. 141

ASSEMBLY BILL NO. 141—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE
TO STUDY MORTGAGE LENDING AND HOUSING ISSUES)

FEBRUARY 6, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Establishes a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. (BDR 54-229)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to mortgage lending; establishing a recovery fund for persons defrauded by mortgage brokers, mortgage agents or mortgage bankers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 This bill establishes the Mortgage Education, Research and Recovery Fund for
 2 persons defrauded by mortgage brokers, mortgage agents or mortgage bankers. The
 3 provisions of this bill are patterned closely after the provisions in chapter 645 of
 4 NRS which establish a recovery fund for persons defrauded by real estate brokers.
 5 (NRS 645.841-645.8494)
- 6 **Section 3** of this bill creates the Fund. **Section 4** of this bill provides for money
 7 for the Fund. **Sections 5-7 and 9-11** of this bill provide for administration of the
 8 Fund and payment of claims against the Fund. **Section 8** of this bill requires the
 9 license of a licensee to be automatically suspended until he repays to the Fund any
 10 amount paid from the Fund to settle a claim against that licensee. **Section 12** of this
 11 bill clarifies that this bill does not limit the authority of the Division of Mortgage
 12 Lending of the Department of Business and Industry to take disciplinary action
 13 against a licensee. **Section 13** of this bill authorizes the Commissioner of Mortgage
 14 Lending to adopt regulations as needed for chapter 645F of NRS.



* A B 1 4 1 R 1 *

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 645F of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 12, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 12, inclusive, of this act,*
5 *unless the context otherwise requires, "Fund" means the*
6 *Mortgage Education, Research and Recovery Fund created by*
7 *section 3 of this act.*

8 **Sec. 3. 1.** *The Mortgage Education, Research and*
9 *Recovery Fund is hereby created as a special revenue fund.*

10 **2.** *A balance of not less than \$300,000 must be maintained in*
11 *the Fund, to be used for satisfying claims against persons licensed*
12 *under chapters 645B and 645E of NRS as provided in sections 2 to*
13 *12, inclusive, of this act. Any balance over \$300,000 remaining in*
14 *the Fund at the end of any fiscal year must be set aside and used*
15 *by the Commissioner for education and research relating to*
16 *mortgages.*

17 **3.** *The interest and income earned on the money in the Fund,*
18 *after deducting any applicable charges, must be credited to the*
19 *Fund.*

20 **Sec. 4.** *The Commissioner shall adopt regulations*
21 *prescribing a fee, in addition to the fees collected for the issuance*
22 *or renewal of a license pursuant to chapters 645B and 645E of*
23 *NRS, to be assessed at the time of issuance or renewal of a license*
24 *and to be used for mortgage education, research and recovery.*
25 *The additional fee must be deposited in the State Treasury for*
26 *credit to the Fund, and must be used solely for the purposes*
27 *provided in sections 2 to 12, inclusive, of this act.*

28 **Sec. 5. 1.** *Except as otherwise provided in subsection 2,*
29 *when any person obtains a final judgment in any court of*
30 *competent jurisdiction against any licensee or licensees pursuant*
31 *to chapter 645B or 645E of NRS, upon grounds of fraud,*
32 *misrepresentation or deceit with reference to any transaction for*
33 *which a license is required pursuant to chapter 645B or 645E of*
34 *NRS, that person, upon termination of all proceedings, including*
35 *appeals in connection with any judgment, may file a verified*
36 *petition in the court in which the judgment was entered for an*
37 *order directing payment out of the Fund in the amount of the*
38 *unpaid actual damages included in the judgment, but not more*
39 *than \$25,000 per judgment. The liability of the Fund does not*
40 *exceed \$100,000 for any person licensed pursuant to chapter 645B*
41 *or 645E of NRS, whether he is licensed as a limited-liability*
42 *company, partnership, association or corporation or as a natural*



1 *person, or both. The petition must state the grounds which entitle*
2 *the person to recover from the Fund.*

3 2. *A person who is licensed pursuant to chapter 645B or*
4 *645E of NRS may not recover from the Fund for damages which*
5 *are related to a transaction in which he acted in his capacity as a*
6 *licensee.*

7 3. *A copy of the:*

8 (a) *Petition;*

9 (b) *Judgment;*

10 (c) *Complaint upon which the judgment was entered; and*

11 (d) *Writ of execution which was returned unsatisfied,*

12 *↪ must be served upon the Commissioner and the judgment*
13 *debtor and affidavits of service must be filed with the court.*

14 4. *Upon the hearing on the petition, the petitioner must show*
15 *that:*

16 (a) *He is not the spouse of the debtor, or the personal*
17 *representative of that spouse.*

18 (b) *He has complied with all the requirements of sections 2 to*
19 *12, inclusive, of this act.*

20 (c) *He has obtained a judgment of the kind described in*
21 *subsection 1, stating the amount thereof, the amount owing*
22 *thereon at the date of the petition, and that the action in which the*
23 *judgment was obtained was based on fraud, misrepresentation or*
24 *deceit of the licensee in a transaction for which a license is*
25 *required pursuant to chapter 645B or 645E of NRS.*

26 (d) *A writ of execution has been issued upon the judgment and*
27 *that no assets of the judgment debtor liable to be levied upon in*
28 *satisfaction of the judgment could be found, or that the amount*
29 *realized on the sale of assets was insufficient to satisfy the*
30 *judgment, stating the amount so realized and the balance*
31 *remaining due.*

32 (e) *He has made reasonable searches and inquiries to*
33 *ascertain whether the judgment debtor possesses real or personal*
34 *property or other assets, liable to be sold or applied in satisfaction*
35 *of the judgment, and after reasonable efforts that no property or*
36 *assets could be found or levied upon in satisfaction of the*
37 *judgment.*

38 (f) *He has made reasonable efforts to recover damages from*
39 *each and every judgment debtor.*

40 (g) *The petition has been filed not more than 1 year after the*
41 *termination of all proceedings, including reviews and appeals, in*
42 *connection with the judgment.*

43 **Sec. 6. 1.** *Whenever the court proceeds upon a petition as*
44 *provided in section 5 of this act, the Commissioner may answer*
45 *and defend any such action against the Fund on behalf of the*



1 *Fund and may use any appropriate method of review on behalf of*
2 *the Fund. The judgment debtor may answer and defend any such*
3 *action on his own behalf.*

4 *2. Unless the judgment was entered by default, consent or*
5 *stipulation or the case was uncontested, the judgment set forth in*
6 *the petition is prima facie evidence but the findings of fact therein*
7 *are not conclusive for the purposes of sections 2 to 12, inclusive,*
8 *of this act.*

9 *3. The Commissioner may, subject to court approval,*
10 *compromise a claim based upon the application of a petitioner. He*
11 *shall not be bound by any prior compromise of the judgment*
12 *debtor.*

13 **Sec. 7. 1.** *If the court finds after the hearing that the claim*
14 *should be levied against the portion of the Fund allocated for the*
15 *purpose of carrying out the provisions of sections 2 to 12,*
16 *inclusive, of this act, the court shall enter an order directed to the*
17 *Commissioner requiring payment from the Fund of whatever sum*
18 *it finds to be payable upon the claim pursuant to the provisions of*
19 *and in accordance with the limitations contained in sections 2 to*
20 *12, inclusive, of this act.*

21 *2. If a petitioner has recovered a portion of his claim from*
22 *sources other than the Fund, the Commissioner shall deduct the*
23 *amount recovered from the other sources from the amount*
24 *payable upon the claim.*

25 **Sec. 8.** *If the Commissioner pays from the Fund any amount*
26 *in settlement of a claim or toward satisfaction of a judgment*
27 *against a licensee, his license issued pursuant to chapter 645B or*
28 *645E of NRS must be automatically suspended upon the effective*
29 *date of an order by the court authorizing payment from the Fund.*
30 *The license may not be reinstated and no other license may be*
31 *granted to him pursuant to chapter 645B or 645E of NRS until he*
32 *has repaid in full, plus interest at a rate equal to the prime rate at*
33 *the largest bank in Nevada, as ascertained by the Commissioner of*
34 *Financial Institutions, on January 1 or July 1, as the case may be,*
35 *immediately preceding the date of judgment, plus 2 percent, the*
36 *amount paid from the Fund on his account. Interest is computed*
37 *from the date payment from the Fund was made by the*
38 *Commissioner, and the rate must be adjusted accordingly on each*
39 *January 1 and July 1 thereafter until the judgment is satisfied.*

40 **Sec. 9. 1.** *Whenever claims are filed against the Fund*
41 *which total more than the maximum liability for the acts of one*
42 *licensee, the maximum liability of the Fund for each licensee must*
43 *be distributed among the claimants in a ratio that their respective*
44 *claims bear to the total of all claims, or in any other manner that*
45 *the court may find equitable.*



1 2. *The distribution must be made without regard to the order*
2 *of priority in which claims were filed or judgments entered.*

3 3. *Upon petition of the Commissioner, the court may require*
4 *all claimants and prospective claimants to be joined in one action*
5 *so that the respective rights of all claimants may be equitably*
6 *determined.*

7 4. *If, at any time, the money deposited in the Fund and*
8 *allotted for satisfying claims against licensees is insufficient to*
9 *satisfy any authorized claim or portion thereof, the Commissioner*
10 *shall, when sufficient money has been deposited in the Fund,*
11 *satisfy the unpaid claims or portions thereof, in the order that the*
12 *claims or portions thereof were originally filed, plus accumulated*
13 *interest at the rate of 6 percent per annum. Any sums received by*
14 *the Division pursuant to sections 8 and 10 of this act must be*
15 *deposited in the State Treasury for credit to the account for*
16 *education and research in the Fund.*

17 **Sec. 10.** *When the Commissioner has paid from the Fund*
18 *any money to the judgment creditor, the Commissioner is*
19 *subrogated to all other rights of the judgment creditor to the extent*
20 *of the amount paid and any amount and interest so recovered by*
21 *the Commissioner on the judgment must be deposited in the State*
22 *Treasury for credit to the Fund.*

23 **Sec. 11.** *The failure of a person to comply with any of the*
24 *provisions of sections 2 to 12, inclusive, of this act shall constitute*
25 *a waiver of any rights hereunder.*

26 **Sec. 12.** *Nothing contained in sections 2 to 12, inclusive, of*
27 *this act limits the authority of the Division to take disciplinary*
28 *action against a licensee for a violation of any of the provisions of*
29 *chapter 645B or 645E of NRS, or of the rules and regulations of*
30 *the Division, nor shall the repayment in full of all obligations to*
31 *the Fund by any licensee nullify or modify the effect of any other*
32 *disciplinary proceeding brought pursuant to the provisions of*
33 *chapter 645B or 645E or the rules and regulations promulgated*
34 *thereunder.*

35 **Sec. 13.** NRS 645F.250 is hereby amended to read as follows:
36 645F.250 **1.** The Commissioner and the Division shall
37 administer the provisions of this chapter and chapters 645A, 645B
38 and 645E of NRS, subject to administrative supervision by the
39 Director of the Department of Business and Industry.

40 **2.** *The Commissioner shall adopt any regulations that are*
41 *necessary to carry out the provisions of this chapter.*

